

48A C.J.S. Judges § 16

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

B. Nature, Creation, Regulation, and Abolition of Office in General

§ 16. As public officer

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West's Key Number Digest

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A judge is a public officer, not an employee.

A judge is a public officer,¹ not a public employee² or state employee.³ A judgeship is a state position,⁴ and judges⁵—including district judges⁶ or superior court judges⁷—may be regarded as state officers, as distinguished from local officers, such as county,⁸ borough,⁹ or city¹⁰ officers, at least to the extent that they perform state functions.¹¹

Within the intent and purpose of various constitutional and statutory provisions, however, particular judges are not state officers,¹² but rather, county,¹³ city,¹⁴ or municipal¹⁵ officers. Judges may occupy a dual position, performing both state and local functions and serving both state and local purposes.¹⁶ In such instances, they may be regarded as both state and local officers.¹⁷

Where the office is created or recognized by the constitution of the state, it is, of course, a constitutional office, and the judge is a constitutional officer.¹⁸ Where, however, the office is created by statute, it is not a constitutional, but a statutory, office.¹⁹

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Footnotes

- 1 Tex.—Thompson v. City of Austin, 979 S.W.2d 676 (Tex. App. Austin 1998).
- 2 Tex.—Thompson v. City of Austin, 979 S.W.2d 676 (Tex. App. Austin 1998).

For purposes of a state law
 A nominee or applicant to fill a judicial vacancy is not an "employee" for the purposes of a state's human rights act.

 Tenn.—Bredesen v. Tennessee Judicial Selection Com'n, 214 S.W.3d 419 (Tenn. 2007).
- 3 Ind.—Board of Trustees of Public Employees' Retirement Fund v. Hill, 472 N.E.2d 204 (Ind. 1985).
- 4 N.M.—Johnson v. Vigil-Giron, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312 (2006).
- 5 Ind.—Board of Trustees of Public Employees' Retirement Fund v. Hill, 472 N.E.2d 204 (Ind. 1985).
- 6 Nev.—State ex rel. Masto v. Montero, 124 Nev. 573, 188 P.3d 47 (2008).

 N.M.—Johnson v. Vigil-Giron, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312 (2006).
- 7 Ind.—Board of Trustees of Public Employees' Retirement Fund v. Hill, 472 N.E.2d 204 (Ind. 1985).
- 8 Neb.—Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

 Wash.—Parker v. Wyman, 176 Wash. 2d 212, 289 P.3d 628 (2012).

Not county office
 N.M.—Johnson v. Vigil-Giron, 2006-NMSC-051, 140 N.M. 667, 146 P.3d 312 (2006).
- 9 N.Y.—In re Richards, 179 A.D. 823, 167 N.Y.S. 152 (2d Dep't 1917), *aff'd*, 221 N.Y. 684, 117 N.E. 615 (1917).
- 10 N.Y.—Kelly v. Commissioner of Records, Surrogate's Court, New York County, 255 A.D. 743, 6 N.Y.S.2d 936 (3d Dep't 1938), *on reargument*, 256 A.D. 761, 12 N.Y.S.2d 607 (3d Dep't 1939).
- 11 Wash.—Stout v. Michelbook, 58 Or. 372, 114 P. 929 (1911).
- 12 Tenn.—Stambaugh v. Price, 532 S.W.2d 929 (Tenn. 1976).
- 13 Tenn.—Stambaugh v. Price, 532 S.W.2d 929 (Tenn. 1976).
- 14 Ill.—Dashney v. Hayes, 267 Ill. App. 420, 1932 WL 2904 (4th Dist. 1932), *cert. denied*.
- 15 N.J.—Rogers v. Taggart, 118 N.J.L. 542, 194 A. 164 (N.J. Sup. Ct. 1937), *judgment aff'd*, 120 N.J.L. 243, 199 A. 47 (N.J. Ct. Err. & App. 1938).

- 16 Wash.—*State ex rel. Edelstein v. Foley*, 6 Wash. 2d 444, 107 P.2d 901 (1940).
- 17 Wash.—*State ex rel. Edelstein v. Foley*, 6 Wash. 2d 444, 107 P.2d 901 (1940).
- 18 N.J.—*In re Caruba*, 139 N.J. Eq. 404, 51 A.2d 446 (Ch. 1947), *order aff'd*, 140 N.J. Eq. 563, 55 A.2d 289 (Ct. Err. & App. 1947).
- 19 Mont.—*State ex rel. Ryan v. Norby*, 118 Mont. 283, 165 P.2d 302 (1946).
- Created by city council**
Ala.—*Wilkinson v. City of Birmingham*, 193 Ala. 139, 68 So. 999 (1915).

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